Supreme Court, U.S.
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No. 91-361

In The

Supreme Court of the United States

October Term, 1991

VICKI LYNNE HOSKINSON, et al.,

Petitioners,

vs.

STATE OF CALIFORNIA, et al.,

Respondents.

Petition For Writ Of Certiorari To The Arizona Court Of Appeals, Division Two

PETITIONERS' REPLY TO THE BRIEF IN OPPOSITION IN BEHALF OF THE STATE OF CALIFORNIA, RESPONDENTS

RICHARD J. GONZALES
STEPHEN C. VILLARREAL
GONZALES AND VILLARREAL, P.C.
261 North Court Avenue
Tucson, Arizona 85701
(602) 623-0398

Counsel for Petitioners Deborah Carlson, et al.,

DALE HARALSON
GREGORY G. WASLEY
HARALSON, KINERK & MOREY, P.C.
82 South Stone Avenue
Tucson, Arizona 85701
(602) 792-4330

Counsel for Petitioner Rodney P. Hoskinson

WINTON D. WOODS
1610 North Sawtelle Ave.
Tucson, Arizona 85716
(602) 621-1041, 881-0816

Counsel of Record

ELIZABETH PEASLEY-FIMBRES
5820 North Pontatoc
Tucson, Arizona 85718
(602) 299-9839

Of Counsel

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

I.

RESPONDENT STATE OF CALIFORNIA'S BRIEF IN OPPOSITION CONTAINS CRUCIAL FACTUAL ERRORS

Petitioners would be loath to file yet another brief in this case were it not for the substantial errors of fact contained in Respondent State of California's Brief in Opposition. The true facts are not in dispute here and were not disputed below. Indeed, the suggestion that Frank Jarvis Atwood was a wandering parolee returning to California at the time he stopped in Tucson and murdered Vicki Lynne Hoskinson appears for the first time in Respondent's reply brief here, and is just plain false and utterly lacking in foundation in the record. We respond only because the misstatement of fact is critical to the jurisdictional rule applicable to this case.

We urged below, inter alia, that under the rule of *World-Wide Volkswagen Corp. v. Woodsen*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed 490 (1980) defendants were subject to jurisdiction in Arizona because they could reasonably have anticipated that when they failed to exercise control over the soon to explode Atwood he would come to Arizona where he had been several times in the preceding months. Obviously, the temporal and physical connections between the failure to act and the event are important. If Frank Atwood was simply a "wandering parolee" as the State of California suggests, the strength of the jurisdictional claim is diminished. But that is clearly untrue. The connection between the predicate acts of recklessness and the events in Arizona is a direct one in terms of both time and distance.

The undisputed truth of the matter is that Frank Atwood was in Defendant Robert McLean's Parole Office in California on September 6, 1984. At that time Robert McLean had a nondiscretionary duty to arrest Frank Atwood under Section 3059 of the California Penal Code. Pet. for Cert. pg. 3. He did not act as he was required by law to act and he set Frank Atwood free. From that time until Frank Atwood was ejected from his parents' home on September 13, following a violent episode apparently caused by freebasing cocaine, Officer McLean purposefully ignored his duty to control Frank Atwood's actions notwithstanding a constantly cascading body of information that would have compelled such action by any reasonable person. PLAINTIFFS' STATEMENT OF FACTS UNDER UNIFORM RULE IV(f), paragraphs 39-41. During that period of time Frank Atwood was in California and subject to control if McLean had chosen to act. But he chose not to act. That willful and wanton indifference to Frank Atwood's potential victims is the predicate act of recklessness on the part of the California defendants. As the Arizona Court of Appeals assumed, that negligence occurred at a time when the defendants "should reasonably have expected" the effects caused in Arizona. Pet. for Cert., App. 4. That reasonable expectation is the basis for plaintiffs' assertion that the defendants could and should have reasonably anticipated the tragic events that in fact occurred in Arizona. See, *World-Wide Volkswagen Corp. v. Woodsen*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed 490 (1980); PLAINTIFFS' STATEMENT OF FACTS UNDER UNIFORM RULE IV(f), paragraph 59.

Those are the facts established by the record and the facts before the court below. There is nothing in the record to support the notion that Atwood was "returning to California" when the murder occurred. As the other Respondents acknowledge, BRIEF OF RESPONDENTS JOHN AND ALICE ATWOOD IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI, pp. 3-5, as the discovery in this case shows and as the testimony in the criminal trial of Frank Atwood established, Frank Atwood came to Arizona from California following the failure of the State of California to take him into custody and the subsequent ejection from his parents' home. Respondents should not be allowed to subvert the certiorari process by the last minute creation of a critical factual question when none in fact exists.

II.

RESPONDENTS BRIEF IN OPPOSITION SEEKS TO INJECT INTO THIS CASE AN ISSUE THAT EXPRESSLY WAS NOT DECIDED BY THE COURT BELOW.

The court below expressly declined to decide the comity issue that is discussed in Respondent's Brief in Opposition at Part I.2 pages 7-9. See, Pet. for Cert., App. 9, note 5. Respondents so admit in a footnote. BRIEF IN OPPOSITION, note 2. Accordingly that discussion is not

properly before the Court and Petitioners do not address it.

Respectfully submitted,

WINTON D. WOODS
1610 North Sawtelle Ave.
Tucson, Arizona 85716
(602) 621-1041, 881-0816

Counsel of Record

ELIZABETH PEASLEY-FIMBRES
5820 North Pontatoc
Tucson, Arizona 85718
(602) 299-9839

Of Counsel

RICHARD J. GONZALES
STEPHEN C. VILLARREAL
GONZALES AND VILLARREAL, P.C.
261 North Court Avenue
Tucson, Arizona 85701
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Counsel for Petitioners
Deborah Carlson, et al.,

DALE HARALSON
GREGORY G. WASLEY
HARALSON, KINERK & MOREY, P.C.
82 South Stone Avenue
Tucson, Arizona 85701
(602) 792-4330

Counsel for Petitioner
Rodney P. Hoskinson